

**ATTACHMENT A to SETTLEMENT AGREEMENT AND STIPULATION**  
**ACL Order R4-2012-0160**  
**Santa Clarita Valley Sanitation District**  
**Analysis of Enforcement Policy Penalty Methodology**

California Water Code (CWC) section 13385(e) requires the State Water Board and Regional Water Boards to consider several factors when determining the amount of civil liability to impose. These factors include in part: "...the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup and abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require."

On 17 November 2010, the State Water Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on 20 May 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability as outlined in CWC section 13385(e). The entire Enforcement Policy can be found at: [http://www.waterboards.ca.gov/water\\_issues/programs/enforcement/docs/enf\\_policy\\_final11179.pdf](http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final11179.pdf).

This attachment summarizes the Prosecution Team's selected factors presented in the original ACLC, and the ultimately selected factors agreed upon by the Parties (the Prosecution Team and Santa Clarita Valley Sanitation District) through settlement negotiations, which commenced after the ACLC was issued on November 26, 2012.

**Step 1 – Potential for Harm for Discharge Violations**

Not Applicable – This step does not apply since the violation of Order Nos. R4-2009-0074 and R4-2009-0075 alleged in the Complaint are non-discharge violations.

**Step 2 – Assessment for Discharge Violations**

Not Applicable – This step does not apply since the violation of Order Nos. R4-2009-0074 and R4-2009-0075 alleged in the Complaint are non-discharge violations.

**Step 3 – Per Day Assessments for Non-Discharge Violations**

Regional Board staff used the matrix set forth in Table 3 of the Enforcement Policy (page 16) to calculate an initial liability factor for the violation of the Orders, considering the **Potential for Harm** and the **Deviation from Requirement**.

*a. Potential Harm*

Staff determined that the **Potential for Harm** was **Moderate** because the violations of Task 17(a), which will lead to a delay in compliance with final effluent limits for chloride, will have an impact on salt sensitive agriculture beneficial uses. Thus, "the characteristics of the violation present a substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm" as described in the Enforcement Policy.

*b. Deviation from Requirement*

Staff determined that the **Deviation from Requirement** was **Moderate** because SCVSD did not submit the Wastewater Facilities Plan and Programmatic EIR by the required deadline, but it has taken steps to do so in the future. Thus, "the intended effectiveness of the requirement has been partially compromised (e.g., the requirement was not met, and the effectiveness of the requirement is only partially achieved)" as described in the Enforcement Policy.

*c. Per Day Factor*

From the range given in the matrix set forth in Table 3 of the Enforcement Policy non-discharge violations of this type, Staff selected a **Per Day Factor** of **0.35**, which is the average factor in the given range.

*d. Maximum per Day Liability Amount*

Pursuant to CWC section 13385, the Regional Board may assess a maximum administrative civil liability of **\$10,000** for each day in which the Dischargers fail to comply with requirements of Order No. R4-2009-0074.

*e. Days Subject to Liability*

SCVSD has been in violation for **572 days** for each Order, calculated from the May 4, 2011 due date for the Wastewater Facilities Plan and Programmatic EIR through November 26, 2012, the date the ACLC was issued.

However, in accordance with the Enforcement Policy (page 18), an alternative approach to penalty calculation for violations that last more than 30 days may be used if the Los Angeles Water Board can make express findings that the violation(s):

- a. Is (are) not causing daily detrimental impacts to the environment or the regulatory program;
- b. Result(s) in no economic benefit from the illegal conduct that can be measured on a daily basis; or
- c. Occurred without the knowledge or control of the violator, who therefore did not take action to mitigate or eliminate the violation.

Los Angeles Water Board staff has determined that the alternative penalty calculation approach is appropriate since the violations result in no economic benefit from the illegal conduct that can be measured on a daily basis.



The alternative penalty calculation approach provides that for violations lasting more than 30 days, the liability shall not be less than an amount that is calculated based on an assessment of the initial liability amount for the first day of the violation, plus an assessment for each 5 day period of violation until the 30th day, plus an assessment for each 30 days of violation thereafter.

Using the alternative penalty calculation approach, **25 days** for the violation of each Order are subject to liability, based on a per day assessment for day 1, 5, 10, 15, 20, 25, 30, 60, 90, and so forth for every additional 30 days of violation within the 501 day total.

Using the above information, the Initial Liability assessed per day was calculated to be **\$87,500**:

*(Per Day Factor) x (Days Subject to Liability) x (Maximum per Day Liability Amount)*

*= (0.35) x (25 days) x (\$10,000/day)*

*= \$87,500 for each facility (Valencia and Saugus)*

**Settlement Considerations:** In settlement negotiations, the Parties agreed to reduce the Potential for Harm factor from moderate to minor (step a, above) and ultimately selected a Per Day factor of 0.30 (step c, above). The resulting calculation is \$75,000 for each facility.

#### **Step 4 – Adjustment Factors**

Staff considered certain Permittee Conduct Factors to calculate assessment for the Violations:

*a. Culpability:*

SCVSD is culpable for the violations. The completion date for Task No. 17(a) is clearly listed in Order Nos. R4-2009-0074 and R4-2009-0075. In addition, SCVSD was also given notice to submit the required documentation in letters from the Los Angeles Water Board dated September 29, 2010; April 1, 2011; and May 27, 2011. SCVSD therefore was fully aware of the requirement of Order Nos. R4-2009-0074 and R4-2009-0075 and failed to comply. SCVSD's compliance with the TMDL in 2015, while not at issue in this Complaint, is jeopardized by SCVSD's failure to submit the initial documentation. In addition, extensive communications between the Regional Board staff and SCVSD staff led the Regional Board staff to presume that the technical documents would be submitted timely. Instead, to the extent that SCVSD has changed course with its remedial and technical intentions, contrary to public statements made to Regional Board staff and to the Regional Board in developing the TMDL, we hope that this Complaint provides the deterrence against

further violations and SCVSD's correspondence stating that the plan would be submitted by December 31, 2012 is accurate. However, to the extent that SCVSD claims it simply needed more time to meet the existing schedule, the May 2011 submittals claiming an "exemption" could have been avoided. Upon receiving the first notice, a reasonable and prudent person would have submitted the required technical documents to come into compliance. For these reasons, staff selected a factor of 1.3. The selection of this factor increases the base liability.

*b. Cleanup and Cooperation:*

SCVSD has voluntarily cooperated in returning to compliance, although is not currently in compliance. As of the date of the Complaint, SCVSD has taken steps to come into compliance with the Orders by approving the staff recommendation to prepare a Wastewater Facilities Plan and EIR, and by releasing a Notice of Preparation. Therefore, Staff selected a factor of 1.0. The selection of this factor neither increases nor decreases the base liability.

*c. History of Violations:*

SCVSD has previously violated effluent limits under NPDES Permit No. CA0054216. Therefore, staff selected a factor of 1.1, which is the minimum multiplier for repeated violations. The selection of this factor increases the base liability.

**Settlement Considerations:** In settlement negotiations, the Parties agreed to reduce the History of Violations factor to 1.0. Therefore, the selection of 1 will not further increase the base liability.

*Revised Assessment for Each Violation*

The initial assessment for the Violation is multiplied by the above factors to give a revised assessment of **\$97,500**:

$$\begin{aligned} & (\text{Initial Assessment}) \times (\text{Culpability}) \times (\text{Cleanup and Cooperation}) \times (\text{History}) \\ & = (\$75,000) \times (1.3) \times (1.0) \times (1.0) \\ & = \$97,500 \text{ for each violation} \end{aligned}$$

**Step 5 – Determination of Total Base Liability Amount**

Since there are two violations being assessed liability, the **Total Base Liability Amount** is **\$195,000** (\$97,500 (Valencia, Order No. R4-2009-0074) + \$97,5000 (Saugus, Order No. R4-2009-0075).

**Step 6 – Ability to Pay and Ability to Continue in Business**

SCVSD is a large public agency that has the ability to increase rates. The Total Base



Liability Amount will not affect the Permittee's ability to continue in business. Accordingly, the Total Base Liability Amount was not adjusted. The burden of proof is on SCVSD to indicate if it has the inability to pay the recommended liability.

#### **Step 7 – Other Factors as Justice May Require**

If the amount determined using the above factors is inappropriate, the amount may be adjusted under the provision for "other factors as justice may require," but only if express findings are made to justify this adjustment. In addition, the costs of investigation and enforcement are "other factors as justice may require," and should be added to the liability amount.

Staff costs incurred by the Los Angeles Water Board to date are \$30,000. This amount was added to the Total Base Liability Amount, bringing the **adjusted Total Base Liability Amount to \$225,000:**

$$\begin{aligned} (\text{Adjusted Total Base Liability}) &= (\text{Total Base Liability}) + (\text{Staff Costs}) \\ &= (\$195,000) + (\$30,000) \\ &= \$225,000 \end{aligned}$$

#### **Step 8 – Economic Benefit**

The Economic Benefit Amount is any savings or monetary gain derived from the act or omission that constitutes the violation. The Enforcement Policy states that the adjusted Total Base Liability Amount shall be at least 10 percent higher than the Economic Benefit Amount so that liabilities are not construed as the cost of doing business and that the assessed liability provides a meaningful deterrent to future violations.

Staff estimates the benefit of non-compliance to be approximately \$10,000 which is an estimate based on the interest able to be generated by SCVSD between May 4, 2011, when the EIR and Wastewater Facilities Plan was due, and December 31, 2012, the date by which SCVSD has promised to come into compliance. This figure was generated using the ABEL model developed by the EPA. Staff is currently treating this cost as a delayed cost rather than an avoided cost.

**Settlement Considerations:** The negotiated settlement of \$225,000 will recover SCVSD's economic benefit, in accordance with the Water Code.

#### **Step 9 – Maximum and Minimum Liability Amounts**

The **Minimum Liability Amount** is equivalent to 110 percent of the **Economic Benefit** derived from the violation. Using the economic benefit estimated in Step 8, the minimum liability amount is **\$11,000** (economic benefit plus 10%).

The **Maximum Liability Amount** is **\$11,440,000**, which is calculated by multiplying the maximum \$10,000 per day rate under Water Code Section 13385, subdivision (c), and 1,144 days, the total number of days SCVSD has been in violation.

**Settlement Considerations:** The negotiated settlement of \$225,000 is between the maximum and minimum administrative civil liability amounts, and is therefore consistent with the Enforcement Policy.

#### **Step 10 – Final Liability Amount**

In accordance with the above methodology, Staff recommends a **Final Liability Amount** of **\$280,250**. This Final Liability Amount is within the statutory minimum and maximum amounts.

**Settlement Considerations:** The negotiated settlement of \$225,000 recovers a majority of the Prosecution Team's recommended administrative civil liability and, in the Prosecution Team's opinion, the settlement is in the best interests of the public.